IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 27TH MARCH 2007 / 6TH CHAITHRA 1929

MFA.No. 799 of 2001(D)

OPMV.78/1992 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM
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APPELLANT:PETITIONER IN OP(MV) NO.78/92.

K.P.AJITHKUMAR, AGED 29 YEARS,
S/O.K.G.PRABHAKRAN NAIR,
KARULLIL HOUSE, IRUPANAM,
TRIPUNITHURA, ERNAKULAM DT.

BY ADV. SRI.R.SUDHISH
SMT.MANJU SUDHISH

RESPONDENTS:RESPONDENTS
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1. STATE OF KERALA, REPRESENTED BY
THE EXECUTIVE ENGINEER, RHI, P.D.DIVISION,
KERALA WATER AUTHORITY, ALUVA.

THE KERALA WATER AUTHORITY REPRESENTED
BY ITS EXECUTIVE ENGINEER, IPD DIVISION,
ERNAKULAM, KOCHI-18.

AMENDMENT CARRIED OUT AS PER IA 1010/98
ORDER DT.3/4/99.

2. K.B.ABDUL AZEEZ, S/O.BAVA,
KAREDATHKALLUMADA PARAMBIL HOUSE,
KANJIRAMATTOM P.O, ERNAKULAM DISTRICT.

3. THE KERALA STATE INSURANCE DEPARTMENT,
BY ITS DISTRICT INSURANCE OFFICER,
GANDHI NAGAR, KOCHI-20.

BY ADV. SMT.CHINCY GOPAKUMAR, SC, KWA
GOVERNMENT PLEADER SRI.BENNY GERVASIS
SRI.M.DINESH , SC, KWA

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 27/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMAN & ANTONY DOMINIC, JJ.
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M.F.A. NO.799 OF 2001
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Dated this the 27th day of March, 2007

J U D G M E N T

Antony Dominic, J.

The appeal is filed by the claimants in OP(MV) 78/92 on the file of MACT, Ernakulam. The accident occurred on 7/12/1991, in which a car bearing Registration No.KBE 2096 hit the bicycle on which the claimant was travelling.

2. The State of Kerala represented by Executive Engineer, Kerala Water Authority was impleaded as first respondent in the claim petition, apparently for the reason that the Kerala Water Authority is the registered owner of the vehicle involved in the accident. Subsequently noticing the erroneous manner in which the registered owner was impleaded, the claimant had filed IA 1010/98 praying for correcting the cause title of the claim petition by deleting the 1st respondent and adding the Kerala Water Authority represented by its Executive Engineer, IPD Division,

Ernakulam, Kochi-18 as the first respondent. Although this amendment as sought for by the claimant was allowed by order dated 3.4.1999, it is seen from the cause title that the first respondent viz. State of Kerala was not deleted. In the above circumstances, holding that there has been non joinder of necessary parties, the Tribunal rejected the claim petition and aggrieved by the said award, the appellant has come up in appeal.

3. We notice that although there was initially non joinder of necessary party to the proceedings due to non impleadment of Kerala Water Authority, that defect was cured by the order passed by the Tribunal in IA 1010/98. Therefore with that order, the defect of non joinder has been cured and in that view of the matter, the approach adopted by the Tribunal that there was still non joinder of parties is incorrect. We feel that for this reason, the impugned order should be set aside and the matter needs to be remanded back to the Tribunal for fresh disposal treating that there has been impleadment of necessary parties.

The order is therefore set aside and the case is remanded back to the Tribunal for fresh consideration and disposal in accordance with law.

P.R.RAMAN, JUDGE.

ANTONY DOMINIC, JUDGE.

Rp